

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING**

**FILED**

MAY 24 2013

IN THE MATTER OF THE OBJECTIONS TO )  
THE MINE PERMIT APPLICATION ) Docket 13-4802  
OF McMURRY READY MIX COMPANY, )  
TFN 5 1/237 )

Jim Ruby, Executive Secretary  
Environmental Quality Council

**BOULDER RESIDENT OBJECTORS' LIST OF WITNESSES AND EXHIBITS  
AND STATEMENT OF ISSUES**

Objectors Dave and Sandra Goodwin, Harv and Denise Hastings, Debbra White, David Payne, Randy Simpson, and Kelly Garside (collectively the "Boulder Residents") respectfully submit this list of witnesses and exhibits and statement of issues, as required by the Order of Schedule entered in this matter on May 24, 2013 by 5 p.m.

**I. List of Witnesses**

Each of the objectors set forth below intend to testify at the hearing, work and weather permitting. Each is a resident of Boulder, Wyoming and owns property very near the proposed mine. Each will testify regarding the location of their property in proximity to the mine and their experience with the mine and its related truck traffic. They will recount the noise, dust, and public safety problems caused by the truck traffic and the operation of the mine itself, and the effect the mine's operation has had on their use of public roadways and public lands in the area. They will also share their observations of sage grouse activity in the area, and the impact that mine operation has had on the number of such birds frequenting the area. The objectors that are likely to testify are:

1. David Goodwin, Objector  
96 South County Road 133  
Boulder, WY 82923

In addition to the topics indicated above, Dave Goodwin may testify about damage to his home, wildlife in the Boulder area, and how McMurry mining operations caused him stress and anxiety. He may be asked to testify concerning photographs he took of cropland. He may also be asked to testify concerning photographs he took of Highway 353, photographs he took of trucks exiting and entering the McMurry mine, and safety concerns with the McMurry mine entrance.

2. Sandra Goodwin, Objector  
96 South County Road 133  
Boulder, WY 82923

In addition to the topics indicated above, Sandra Goodwin may be called to testify concerning wildlife in the Boulder area, damage to her home, and how previous McMurry mining operations caused her stress, anxiety, sleeplessness, migraines, and clinical depression. She may be asked to testify about safety concerns with the McMurry mine access.

3. Denise Hastings, Objector  
241 South County Road 133  
Boulder, WY 82923

Denise Hastings will not be present at the hearing. However, a transcript of her testimony from the previous EQC hearing is listed as Exhibit 29, and the Objectors' will move to have the exhibit admitted at the upcoming hearing. This testimony includes how she and her husband, Harv Hastings, used Highway 353 prior to operations of McMurry's mine operation in the Boulder Area. Testimony will include how the McMurry mine operation disrupted the public peace.

4. Debra White, Objector  
51 Jackrabbit Lane  
Boulder, WY 82923

In addition to the topics indicated above, Debbra White may be called to testify concerning her property in the area and the stress that McMurry mine has caused her.

5. David Payne, Objector  
51 Jackrabbit Lane  
Boulder, WY 82923

In addition to the topics indicated above, David Payne may be called to testify about how the McMurry mine has deterred him from building a home in the Boulder area, and the stress this has caused him.

6. Randy Simpson, Objector  
48 South County Road 133  
Boulder, WY 82923

In addition to the topics listed above, Randy Simpson may be called to testify concerning his and his wife's use of the road prior to McMurry's mining operation. He may also testify about road safety concerns, stress, headaches, sinus problems, and hearing issues.

7. Kelly Garside, Objector  
1491 Highway 353  
Boulder, WY 82923

In addition to the topics listed above, Kelly Garside may testify about wildlife in the Boulder area, damage to his home, and increased sinus infections during McMurry mining operations. He may be asked to testify about photographs he took of the mine and the mine entrance. He may also be asked to testify concerning safety issues with the McMurry access.

Several of the objectors may be unable to travel to Cheyenne for the hearing due to health concerns and work conflicts. Their testimony may be presented by telephone, or in the form of their prior sworn testimony before the Council.

8. Damon Newsome  
District Traffic Engineer, WYDOT

3200 Elk Street  
Rock Springs, WY 82901

Damon Newsome will not be called to testify. The Objectors will move to have his deposition admitted into evidence.

9. Mary Flanderka  
Wyoming Game and Fish Department  
Habitat Protection Coordinator

Mary Flanderka may be called to testify about Executive Order 2011-05, Sage Grouse, and the Density Disturbance Calculation Tool (DDCT). She may be asked to testify about guidance the Wyoming Game and Fish Department gave to Steve Stresky in conducting the DDCT. She may be asked to testify about correspondences with McMurry and Steve Stresky. She may be asked to testify about croplands, suitable sage grouse habitat, unsuitable sage grouse habitat, and disturbed areas. She may also be called to testify about the overall DDCT disturbance analysis and individual lek disturbance analysis. She may also be asked to testify about Wyoming Game and Fish Department's approval of McMurry's DDCT.

10. Darrell Snyder  
Wyoming Department of Transportation  
Maintenance Foreman, Pinedale Office

Darrell Snyder may be called to testify by telephone concerning the McMurry mine entrance. He may testify about his correspondence with McMurry, the work he performed concerning the McMurry mine entrance, and the letter he sent to McMurry designating the McMurry entrance a commercial access.

11. Steve Stresky

Steve Stresky may be called to testify concerning the McMurry mine application permit. He may be asked to testify about changes made to the permit, studies conducted, and

correspondences from the Wyoming Game and Fish Department. He may also be asked specific questions about the multiple DDCT calculations he performed for McMurry.

12. Tanya King  
Department of Environmental Quality, Land and Quality Division  
Environmental Scientist

Tanya King may be called to testify concerning the McMurry mine permit application. She may be asked to testify concerning Executive Order 2011-05, the mine entrance approval, and the overall approval of the McMurry mine permit application.

Objectors furthermore reserve the right to call any witness listed by the Applicant, the DEQ or the other objectors, and reserve the right to call rebuttal witnesses necessary to rebut testimony or exhibits propounded by any party.

## **II. List of Exhibits**

The Boulder Residents may introduce one or more of the following Exhibits:

1. Short film of Truck Traffic on County Road 133. This film consists of approximately 6 minutes of video, all shot by Objector Sandra Goodwin, depicting heavy truck traffic from the McMurray Mine.
  - i. This film was used in the March 2011 EQC hearing, and should be in the possession of McMurry and the DEQ. A copy can be provided upon request.
2. Map of area showing leks, mines, and Mathis Lane Alternative
  - i. This map was used as an exhibit at the previous EQC hearing. A copy is being provided herewith as Exhibit 2.
3. List of Steve Stresky's correspondence with the WGFD McMurry
  - i. McMurry RFP (7 and 9) 0358-0359
4. Email correspondence between Mary Flanderka and Steve Stresky May 3, 2011.
  - i. McMurry RFP (7 and 9) 0421
5. Email between Mary Flanderka and Steve Stresky dated August 24, 2011.

- i. McMurry RFP (7 and 9) 0419
6. Emails between Mary Flanderka and Steve Stresky dated September 11, 2011.
  - i. McMurry RFP (7 and 9) 0410-0412
7. Emails between Mary Flanderka and Steve Stresky dated September 13, 2011.
  - i. McMurry RFP (7 and 9) 0395-0401
8. Emails between Mary Flanderka and Steve Stresky dated February 6, 2012.
  - i. McMurry RFP 0353-0354
9. Deposition transcript of Damon Newsome, with exhibits.
10. Class C Manual, Wyoming Rules of the Road
  - i. This exhibit is attached herewith as Exhibit 10.
11. Memorandum from Tanya King to File TFN 5 1/237 on June 12, 2011 concerning Mine Entrance.
  - i. Located at B.R. 000348-000349.
12. Letter from Tanya King to Ron McMurry about trucks turning dated June 13, 2011.
  - i. B.R. 000347.
13. Letter from Steve Stresky to Tanya King dated June 17, 2011 regarding WYDOT approval.
  - i. B.R. 000417-000422
14. Letter from Mark Sullivan to Mark Moxley dated September 29, 2011 concerning the approach at McMurry pit with photos.
  - i. B.R. 000209-000211; B.R. 000600-000604
15. Photos of trucks exiting and entering the McMurry Entrance.
  - i. B.R. 000600-000604
16. Memo from Jennifer Frazier to Dave Finely, Bob Fill, and Tony Hoyt dated November 30, 2008 with accompanying photos.
  - i. B.R. 000312-000323
17. Deposition transcript of Mary Flanderka.

18. Photographs of the Entrance to the McMurry Mine.
  - i. B.R. 000625-000627
  
19. Photographs of trucks in front of the Goodwin's home.
  - i. B.R. 000599
  
20. Photographs of Dust
  - i. B.R. 000605-000608
  
21. Photographs of approach to mine from north and south taken by Dave Goodwin.
  - i. These photographs have previously been provided in an email and are attached hereto as Exhibit 21.
  
22. Photographs of cropland .
  - i. B.R. 000584-000598
  
23. Receipt for replaced window.
  - i. B.R. 000628
  
24. EQC March 10, 2011 decision denying the McMurry mine permit.
  - i. This exhibit should be in McMurry and the DEQ's possession.
  
25. DDCT Draft 2
  - i. McMurry RFP (7 and 9) 0376
  
26. DDCT Draft 3
  - i. McMurry RFP (7 and 9) 0377
  
27. DDCT, D9-1-1, drawn December 15, 2011
  - i. Attached as exhibit 27
  
28. DDCT, Sage Canopy Covers, drawn November 28, 2011.
  - i. Attached as exhibit 28
  
29. Transcript of testimony of Denise Hasting's testimony from the December 12, 2010 EQC hearing.
  - i. Attached as exhibit 29

The Boulder Residents furthermore reserve the right to use and introduce any exhibit listed by any other party, and to use any other documents or things that may be necessary for the purposes of impeachment on cross-examination, or as rebuttal evidence.

### **III. Statement of Issues**

The issue presented to the EQC for adjudication in this contested case hearing is whether a permit may be issued to McMurry Ready Mix Co. under Wyo. Stat. § 35-11-406 for the operation of a 350 acre gravel mine when the operation of that mine endangers public health and safety, constitutes a public nuisance, and does not comply with Executive Order 2011-05.

#### ***a. The Proposed Mine Endangers Public Health and Safety***

The issue is whether the McMurry mine permit application continues to endanger the health and safety of the Boulder Residents and members of the public in violation of Wyo. Stat. § 35-11-406 (m)(vii) when trucks must still cross over the centerline into oncoming traffic when entering and exiting the McMurry mine.

#### ***b. Proposed Mine is a Public Nuisance***

The issue is whether the McMurry mine permit application continues to be a public nuisance in violation of Wyo. Stat. §35-11-406 (m)(vii) when the permit does not limit the frequency of trucks, hauling activity, or overall disturbance of the peace.

#### ***c. The McMurry DDCT is not in Compliance with Executive Order 2011-05***

The issues is whether the McMurry mine permit application is in compliance with Executive Order 2011-05 and not contrary to the policy of Wyoming under Wyo. Stat. 406(m)(iii).

Respectfully Submitted,

DATED: This 24<sup>th</sup> day of May, 2013.



MARK D. SULLIVAN, P.C.

/S/ \_\_\_\_\_

By: Mark D. Sullivan (6-3824)  
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 24, 2013, the foregoing List of Witnesses, List of Exhibits, and Statement of the Issues were served via electronic mail to the following:

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Wyoming Attorney General's Office  
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/S/ \_\_\_\_\_  
Laura Ethington